UNITED STATES PATENT AND TRADEMARK OFFICE

Paper No.

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OFFICE OF PETITIONS

In re Application of   :
Mitterer, et al.   :   LETTER REGARDING
Application No. 10/003,621   :   PATENT TERM ADJUSTMENT
Filed: November 2, 2001   :
Attorney Docket No. 20695D-000110US:

This is in response to the "REQUEST FOR RE-DETERMINATION OF
PATENT TERM ADJUSTMENT," filed March 3, 2005, pursuant to their
duty of good faith and candor to the Office. Applicants request
that the initial determination of patent term adjustment under
35 U.S.C. 154(b) be corrected from three hundred forty-seven
(347) days to two hundred eighty-seven (287) days.

The application for patent term adjustment is **GRANTED** to the
extent indicated herein.

The Office has updated the PAIR screen to reflect that the
correct Patent Term Adjustment (PTA) determination at the time
of the mailing of the Notice of Allowance is two hundred twenty-
four (224) days. A copy of the updated PAIR screen, showing the
correct determination, is enclosed.

On December 10, 2004, the Office mailed the Determination of
Patent Term Adjustment under 35 U.S.C. 154(b) in the above
identified application. The Notice stated that the patent term
adjustment (PTA) to date is 347 days. On March 3, 2005,
applicants submitted the instant paper, disclosing that a period
of reduction of 60 days should have been entered for applicant
delay in responding to the final Office action mailed June 2,
2004.

The record supports a conclusion that the patent issuing from the application is not subject to a terminal disclaimer.

A review of the application history confirms that pursuant to § 1.704(b), a period of reduction should have been entered for applicant delay in responding to the Office action mailed June 2, 2004. Specifically, applicants' response, a request for continued examination, was not received until November 1, 2004, three months and 60 days later. Accordingly, applicants are correct that a period of reduction of 60 days should have been entered for this delay.

A review of the record reveals a further basis for reduction. Section 1.704(c)(7) provides that:

> Submission of a reply having an omission (§1.135(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed;

In this instance, a response to the non-final Office action was received on March 15, 2002. However, the non-final Office action required submission of a certified copy of a priority document. The certified copy was not filed until May 17, 2004. Accordingly, pursuant to § 1.704(c)(7), the PTA should be reduced by 63 days, the number of days beginning on the day after the date the reply having an omission was filed, March 16, 2004 and paper correcting the omission was filed, May 17, 2004.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is two hundred twenty-four (224) days (347 – (63 + 60)).

As this letter was submitted to advise the Office of an error in applicants' favor, the Office will not assess the $200.00 application fee under 37 CFR 1.705(b). The Office thanks applicants for their good faith and candor in bringing this matter to the attention of the Office.

The application is being forwarded to the Publishing Division for timely issuance of the patent.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
  for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen